

HOUSE BILL 1872

By Williams

AN ACT to amend Tennessee Code Annotated, Title 34,
Chapter 6, relative to powers of attorney.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following as a new section:

(a) If the original instrument creating a power of attorney is lost, a certified copy of the instrument recorded at the county register of deeds office or other governmental office may be used in the same manner as the original; provided, that the instrument has not been revoked in a later recordation.

(b)

(1) If the original instrument creating a power of attorney is lost and a certified copy of the instrument is not available and the principal is unable to create a new instrument due to disability or incapacity, a person named in an instrument as attorney in fact for the principal may petition a court of competent jurisdiction to establish the lost instrument.

(2) An attorney in fact seeking to establish a lost instrument must satisfactorily demonstrate to the court:

(A) That the principal made and executed an instrument creating a power of attorney granting powers to the attorney in fact;

(B) That the principal is unable to create a new instrument due to disability or incapacity;

(C) The substance and content of the missing instrument;

(D) That the instrument cannot be found after diligent search; and

(E) That the instrument was not revoked by the principal or a court-appointed fiduciary.

(3) It is presumed that a lost instrument creating a power of attorney was destroyed or revoked by the principal. However, this presumption may be rebutted by clear and convincing evidence to the contrary. Such evidence may be circumstantial or direct and may include declarations of the principal before or after making the instrument.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.